IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE R.BASANT

THURSDAY, THE 22ND MARCH 2007 / 1ST CHAITHRA 1929

Crl.MC.No. 843 of 2007()

CC.408/2005 of JUDL. MAGISTRATE OF FIRST CLASS COURT-I, VADAKKANCHERY
CRIME NO.78/05 OF PAZHAYANNUR POLICE STATION

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PETITIONER/ACCUSED NO.1. TO 3:

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1. JAYACHANDRAN, S/O.THEYYAN NAIR,
CHIRAKKAL HOUSE, KANIYARKODU VILLAGE,
KOOTHAMBILLY,THRISSUR DIST.

2. THEYYAN NAIR,S/O.PARUKUTTY AMMA,
CHIRAKKAL HOUSE, THIRUVILWAMALA VILLAGE,
KOOTHAMBILLY,THRISSUR DIST.

3. BHARATHYAMMA, W/O. THEYYAN NAIR,
CHIRAKKAL HOUSE, THIRUVILWAMALA VILLAGE,
KOOTHAMBILLY,THRISSUR DIST.

BY ADV. SRI.P.A.NOOR MUHAMMED
SRI.C.K.PRASAD

RESPONDENTS/COMPLAINANT:

STATE OF KERALA REPRESENTED BY THE
PUBLIC PROSECUTOR, HIGH COURT OF KERALA,
ERNAKULAM.

BY PUBLIC PROSECUTOR SRI.S.U.NAZER

THIS CRIMINAL MISC. CASE HAVING COME UP FOR ADMISSION ON 22/03/2007, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

R.BASANT, J.

Crl.M.C.No.843 of 2007

Dated this the 22nd day of March 2007

O R D E R

The petitioners are accused 1 to 3 and they face indictment in a prosecution for offenceS punishable interalia under Section 498(A) read with 34 I.P.C. The proceedings were initiated on the basis of a private complaint filed by the defacto complainant - the wife of the first petitioner. It was referred to the police under Section 156(3) Cr.P.C. After investigation, final report was filed by the investigating officer. Cognizance has been taken. The petitioners have already entered appearance. It is further submitted that the learned Magistrate has already framed charges against the petitioners. The order framing charges remains unchallenged. The petitioners have now come to this court with the prayer that the powers under Section 482 Cr.P.C may be invoked to quash the proceedings against the petitioners.

2. What is the reason? The learned counsel for the petitioners submits first of all that the allegations are all false. It is further submitted that the allegations raised are vexatious and are made because of the strain in the matrimonial relationship.

The learned counsel for the petitioners further submits that there are contradictions between the versions of different witnesses and the witnesses examined by the prosecution are interested in favour of the defacto complainant. The counsel further submits that though the allegation is of physical cruelty also, no injuries are suffered by the alleged victim. He further points out that there is a long delay of eleven months in filing the private complaint and the said delay has not been explained satisfactorily. The learned counsel for the petitioners further submits that the precise allegations raised in the final report do not completely support the allegations in the private complaint and the F.I.S.

3. I have heard the learned counsel for the petitioners in detail. I must alertly remind myself of the nature, quality and contours of the jurisdiction that I am called upon to exercise. The Powers under Section 482 Cr.P.C are sought to be invoked. This is an extraordinary inherent jurisdiction available to this court. Such jurisdiction is not to be invoked as a matter of course. Exceptional and compelling reasons must be shown to exist to justify invocation of such powers. Even the fact that the

accused may be entitled to claim discharge or acquittal in the course of the trial, cannot persuade this court to invoke such inherent jurisdiction. It will be hazardous for a court to attempt to resolve the disputed questions of fact by invoking the jurisdiction under Section 482 Cr.P.C.

4. I shall scrupulously avoid any detailed reference to the contentions raised which have a bearing on the merits and acceptability of the allegations and evidence in support of such allegations. Suffice it to say that after having heard the learned counsel for the petitioners in detail, I am satisfied that this is a fit case where the petitioners must raise all their relevant contentions and claim acquittal before the learned Magistrate. The learned Magistrate, needless to say, shall have to consider all such contentions to be raised by the petitioners in detail and take appropriate decision.

5. Finally, the learned counsel for the petitioners submits that if unnecessary insistence were made on the personal appearance of the accused persons, the accused - particularly accused No.2 and 3, parents of the first accused would suffer great prejudice and undeserved trauma. I find no

reason why any court should unnecessarily insist on the personal presence of the accused persons unless such presence is absolutely essential for the proper further progress of the case. It is not necessary for any criminal court to unnecessarily and ritualistically insist on the personal presence of the accused persons. I have no reason to assume that the learned Magistrate would make such unreasonable insistence. The petitioner can claim exemption from personal appearance.

6. In the result, this Criminal Miscellaneous Case is dismissed but subject to the above observations.

(R.BASANT, JUDGE)

jsr

// True Copy//

PA to Judge

R.BASANT, J

C.R.R.P.No.

ORDER

21ST DAY OF JULY 2006